

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000716-001 DT

02/14/2012

COMMISSIONER MYRA HARRIS

CLERK OF THE COURT
K. Waldner
Deputy

THE OKONESKI TRUST

SCOTT E WILLIAMS

v.

LORI ANN CULLISON (001)

LORI ANN CULLISON
1322 W MULBERRY DR
PHOENIX AZ 85013

ENCANTO JUSTICE COURT
REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

Lower Court Case No. CC2011134190 FD.

Defendant Appellant Lori Ann Cullison (Defendant) appeals the Encanto Justice Court's determination that she was guilty of a forcible detainer. Defendant contends the trial court erred. For the reasons stated below, the court affirms the trial court's judgment.

I. FACTUAL BACKGROUND.

On July 8, 2011, Plaintiff filed a forcible entry and detainer action in the Encanto Justice Court. Defendant—on July 13, 2011—filed a Motion to Dismiss the forcible entry and detainer alleging the justice court lacked subject matter jurisdiction. Defendant based her motion on a Superior Court ruling in CV93-90721. On July 14, 2011, the trial court heard Defendant's Motion to Dismiss. The trial court—after announcing the matter had been “actively debated” in the Maricopa County Justice Court bench and the majority view was that the justice courts have jurisdiction—rejected Defendant's Motion to Dismiss.¹

Thereafter, the trial court immediately proceeded with the forcible entry and detainer action. Defendant admitted to living in the home. She also admitted a Deed of Trust had been signed and recorded. The trial court—in response to an allegation the Deed of Trust was forged—informed Defendant the court could not consider that claim in an eviction action.² The trial court further

¹ Audio recording of bench trial and hearing on July 14, 2011, at 9:05:09–56.

² *Id.* at 9:08:04.

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informed Defendant she would need to bring a quiet title action in Superior Court.³ The trial court then ruled it was not deciding ownership but was deciding who had the better right to be in possession.⁴ The Court stated the record owner had the better right to be in possession; and if there was a deed of trust sale, the person named in that sale is the record owner.⁵ The trial court determined it needed to sign the forcible detainer⁶ after again informing Defendant (1) if she challenged ownership, she needed to bring an action and (2) the Justice Court was not deciding ownership as justice courts cannot decide ownership of real property.⁷ The trial court struck the attorney fees provision but granted Plaintiff judgment for one month's rent.⁸ The trial court also determined Defendant waived any argument about service because she appeared at court and had filed a Motion to Dismiss.⁹

Defendant filed a timely appeal. Plaintiff filed a responsive memorandum. Thereafter, Defendant filed an additional pleading denominated. "Supplement to Appellants [sic] Opening Memorandum. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12-124(A).

II. ISSUES:

A. Did The Trial Court Have Subject Matter Jurisdiction Over A Defaulted Buyer In A Forcible Entry and Detainer Action Filed Pursuant to A.R.S. §12-1173.01.

The essence of this case is whether the Superior Court had exclusive as opposed to concurrent jurisdiction on forcible entry and detainer (FED) cases involving defaulted buyers. The statute is A.R.S. §12-1173.01 which states:

A. In addition to other persons enumerated in this article, a person in any of the following cases who retains possession of any land, tenements or other real property after he receives written demand of possession may be removed through an action for forcible detainer filed with the clerk of the superior court in accordance with this article:

1. If the property has been sold through the foreclosure of a mortgage, deed of trust or contract for conveyance of real property pursuant to title 33, chapter 6, article 2.

³ *Id.* at 9:08:12-17.

⁴ *Id.* at 9:09:04.

⁵ *Id.* at 9:09:16.

⁶ *Id.* at 9:09:41.

⁷ *Id.* at 9:09:32-55.

⁸ *Id.* at 9:10:24-9:11:00.

⁹ *Id.* at 9:11:00-9:11:12.

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2. If the property has been sold through a trustee's sale under a deed of trust pursuant to title 33, chapter 6.1.
 3. If the property has been forfeited through a contract for conveyance of real property pursuant to title 33, chapter 6, article 3.
 4. If the property has been sold by virtue of an execution and the title has been duly transferred.
 5. If the property has been sold by the owner and the title has been duly transferred.
- B. The remedies provided by this section do not affect the rights of persons in possession under a lease or other possessory right which is superior to the interest sold, forfeited or executed upon.
- C. The remedies provided by this section are in addition to and do not preclude any other remedy granted by law.

The relevant language from this section is that the holdover person “may be removed through an action for forcible detainer filed with the clerk of the superior court.” This Court notes the permissive nature of the language because the Legislature used the term “may” instead of “shall.” Defendant contends this statute is subject to statutory interpretation because the term “may” should be interpreted as “shall.” In contrast, Plaintiff maintains the statute is permissive and provides for concurrent jurisdiction between the Justice Court and Superior Court but provides an additional remedy as opposed to a separate forum for the lawsuit.

Defendant argues the statute specifically deprives the Justice Court of jurisdiction over forcible detainer actions involving defaulted buyers as opposed to tenants. In support of her contention, Defendant cites a Superior Court ruling in CV93–90721 and suggests the trial court does not understand the principle of stare decisis. In this, Defendant errs. Superior Court rulings do not create law. They are not published opinions and are not dispositive of any issue except for the case in which they appear. Ariz. R. Supreme Ct., Rule 111 (c) and Superior Court Local Rules—Maricopa County, Rule 9.11 govern when and if a written decision forms precedent. There is no showing that the Hon. Christopher S. Skelly’s determination in CV93–90721 was ever designated for publication. Therefore this determination did not create precedent. Defendant provides no valid precedent for her argument.

Justice Courts have concurrent jurisdiction over forcible entry and detainer actions where the amount at issue is less than ten thousand dollars. A.R.S. § 22–201. Where the amount at issue is greater than ten thousand dollars, the Superior Court has exclusive jurisdiction. This Court must now determine if the Legislature—when enacting A.R.S. 12–1173.01—(1) intended to add to the type of actions that could be heard as forcible detainer actions—and therefore be subject to concurrent jurisdiction with the Superior Court—or (2) if the Legislature intended to treat

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forcible detainer actions filed by §12–1173.01 litigants as if they were cases synonymous with forcible detainer actions where the amount in controversy is greater than ten thousand dollars.

Turning to the facts of this case, this Court first notes that forcible detainer is a limited remedy and is only used to obtain possession of property. Our courts have repeatedly held the only issue to be determined in a forcible entry and detainer action is the right to actual possession. *Olds Bros. Lumber Co. v. Rushing*, 64 Ariz. 199, 204, 167 P.2d 394, 397 (1946); A.R.S. §12–1177 (A). The merits of title may not be litigated in a forcible detainer action. *Taylor v. Stanford*, 100 Ariz. 346, 414 P.2d 727 (1966). In Defendant’s case, Defendant had already lost her rights to the property as it was sold in June, 2011. Even if Defendant is correct in asserting she should not have lost her rights to the property, a forcible detainer action is not one where this can be litigated.

Here, Plaintiff filed the forcible detainer action pursuant to A.R.S. §12–1173 and A.R.S. § 12–1173.01. Plaintiff claimed (1) Defendant was a tenant at sufferance following the sale of the Deed of Trust and (2) a fair rental value for the property was \$1,050.00. Plaintiff relied on *Andreola v. Arizona Bank*, 26 Ariz. App. 556, 558, 550 P.2d 110, 112 (Ct. App. 1976) as support for its contention that the Justice Court was the correct forum.¹⁰ Because Plaintiff sued under A.R.S. §12–1173 and because the amount in controversy was less than \$10,000.00, the Justice Court was the appropriate forum for the §12–1173 claim. In addition, Plaintiff also asserted A.R.S. §12–1173.01 provided authority for Plaintiff’s forcible entry and detainer claim because Plaintiff obtained the property following the sale of the Deed of Trust.

In 1984, the Arizona Legislature amended the forcible detainer statutes and enacted A.R.S. § 12–1173.01. Our Supreme Court interpreted the Legislature’s act to mean A.R.S. § 12–1173.01 expanded the scope of the remedy to include transactions in which one holds over in possession after the property has been sold through foreclosure, trustee’s sale, forfeiture, execution or other transaction. *Curtis v. Morris*, 186 Ariz. 534, 535, 925 P.2d 259, 260 (1996). Nothing in A.R.S. § 12–1173.01 specifically deals with the justice court’s subject matter jurisdiction. Furthermore, although *Andreola v. Arizona Bank*, *id.*, 26 Ariz. App. at 558, 550 P.2d at 112 pre-dated the legislative act, the Arizona Supreme Court found its holding to be dispositive in deciding. *Curtis v. Morris*, *id.*, 186 Ariz. at 535, 925 P.2d at 260.

A.R.S. § 12–1173.01 provides for relief by allowing the filing of the complaint with the clerk of the superior court. However, the statute does not (1) specify this is the only way to file and (2) does not mandate the superior courts have exclusive jurisdiction over this class of forcible detainer action. Consequently, this Court finds the language of A.R.S. § 12–1173.01 to be permissive. In prior case law, the Arizona Supreme Court interpreted the statute as providing a remedy and not as a schematic for changing the jurisdiction of the justice courts.

¹⁰ While *Andreola*, *id.*, has not been overruled, this Court recognizes the *Andreola* case predates Legislature’s passing of A.R.S. § 12–1173.01.

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This statute is closely related to A.R.S. § 12–1173. When possible, related rules and statutes are considered in conjunction with one another and harmonized. *Hornbeck v. Lusk*, 217 Ariz. 581, 177 P.3d 323, ¶ 6 (Ct. App. 2008). Additionally, if “the language of a rule can be interpreted in more than one way, we honor the interpretation that would achieve the general goals of the scheme in question.” *Id.* at ¶ 6. The general scheme about FED actions is to allow concurrent jurisdiction between the justice and superior court based on the amount in controversy in the action.

A.R.S. § 12–1173.01 is in *pari materia* with A.R.S. § 12–1173. As stated by our Arizona Supreme Court in *Collins v. Stockwell*, 137 Ariz. 416, 419, 671 P.2d 394, 397 (1983):

In *pari materia* is a rule of statutory construction whereby the meaning and application of a specific statute or portion of a statute is determined by looking to statutes which relate to the same person or thing and which have a purpose similar to that of the statute being construed. Statutes *in pari materia* must be read together and all parts of the law on the same subject must be given effect, if possible. The objective of the rule requiring related statutes to be construed in *pari materia* is to carry into effect the intent of the Legislature.

[Citations omitted.]

Subject matter jurisdiction is the power to hear and determine cases of the general class to which the particular proceedings belong. *Tube City Min. and Mill. Co. v. Otterson*, 16 Ariz. 305, 311–15, 146 P. 203, 206–07 (1914); *State v. Phelps*, 67 Ariz. 215, 220, 193 P.2d 921, 925 (1948); *In re Marriage of Dorman*, 198 Ariz. 298, 9 P.3d 329 ¶ 7 (Ct. App. 2000) quoting *Estes v. Superior Court* 137 Ariz. 515, 517, 672 P.2d 180, 182 (1983). The jurisdiction of the justice courts is conferred by Const. Art. 6, § 32 and A.R.S. 22–201. See *State ex rel Milstead v. Melvin*, 140 Ariz. 402, 404, 682 P. 2d 407, 409 (1984). A.R.S. 22–201 (D) specifically grants justice courts concurrent jurisdiction with superior courts in cases of forcible entry and detainer when the amount in controversy is—as here—less than \$10,000.00. Section D was reenacted in 2000, years after A.R.S. § 12–1173.01 was added. Had the Legislature wished to change the justice court’s subject matter jurisdiction, the Legislature could have passed appropriate legislation. A.R.S. § 12–1173.01 expanded a remedy. It did not change the subject matter jurisdiction for the justice courts.

Subject matter jurisdiction lies at the heart of each case. If the Legislature intended A.R.S. § 12–1173.01 to supersede A.R.S. § 12–1173 and A.R.S. § 22–201 it could have explicitly done so. Absent specific language mandating the change in subject matter jurisdiction, this Court will not presume such intent. *Achen-Gardner, Inc. v. Superior Court In and For County of Maricopa*, 173 Ariz. 48, 55, 839 P.2d 1093, 1099 (1992). Because (1) the Legislature failed to enact any change to the justice courts’ subject matter jurisdiction—A.R.S. § 22–201—and (2) because rules of statutory construction favor construing statutes in *pari materia*, this Court finds the Justice

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Court did not err in denying Defendant's Motion To Dismiss and in finding it had subject matter jurisdiction to hold the forcible detainer proceeding.

B. Did the Trial Court Abuse Its Discretion When It Failed To Inquire Into Plaintiff's Title.

Defendant maintains the trial court erred when it failed to inquire into the merits of Plaintiff's title to the property. Forcible detainer actions are summary proceedings and the only issue to be raised is that of actual possession. A.R.S. § 12-1177 *Curtis, id.*, 186 Ariz. at 535, 925 P.2d at 260. Defendant misunderstands the function of the trial court in a FED proceeding. At court, Defendant acknowledged the property was subject to a Deed of Trust. She also did not raise any issue about Plaintiff's title at the time of the trial. When a party fails to raise an issue, no appeal on the issue is allowed. *Harris v. Cochise Health Systems*, 215 Ariz. 344, 160 P.3d 223 ¶ 17(Ct. App. 2007).

III. CONCLUSION.

Based on the foregoing, this Court concludes the Encanto Justice Court (1) had jurisdiction over the forcible detainer; (2) correctly failed to sua sponte inquire about the possible merits of Plaintiff's title; and (3) and did not err.

IT IS THEREFORE ORDERED affirming the judgment of the Encanto Justice Court.

IT IS FURTHER ORDERED remanding this matter to the Encanto Justice Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Myra Harris

THE HON. MYRA HARRIS
Judicial Officer of the Superior Court

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